IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Writ Petition No.1203 of 2007

Mohd. Asraf Mohd. Yunus Shaikh — Petitioner

Vs.

Deputy Commissioner of Police,
Zone V, Mumbai & anr. — Respondents

Mr.U.N.Tripathi for petitioner.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.
August 24, 2007.

ORAL ORDER

1. Heard Mr.Tripathi, the learned counsel for the petitioner.

2. Rule. APP waives service for the State. By consent Rule is made returnable forthwith.

3. Petitioner is aggrieved by the order of externment passed on 8/11/2006 under Section 56(1) of the Bombay Police Act, 1951. By the said order the petitioner was externed for a period of two years from the territories of Greater Mumbai, Navi Mumbai

and Thane districts for a period of two years. However in an appeal filed under Section 60 of the said Act the Appellate Authority by its order dated 22nd June 2007 has reduced the externment period for one year and as of now out of the total period of one year of externment, only about two months period is remaining.

4. Mr.Tripathi, the learned counsel for the petitioner has opposed the order of externment mainly on the reasons that it is based on only one C.R. i.e. C.R.No.261/05 registered for the offences punishable under Sections 323, 324 and 504 read with Section 34 of IPC and two in-camera statements recorded in the first week of March 2006 and as per him these two in-camera statements are vague so far as the location of the alleged offence is concerned and, therefore, the petitioner was deprived of an opportunity to defend the show cause notice effectively and more particularly by pleading alibi. Mr.Tripathi states that if the location of the particular factory as had come out in the in-camera statements recorded on or about 4th March 2006 was stated in the show cause notice, the petitioner could have a reasonable opportunity to defend the

allegation by pointing out by placing reasonable evidence that he was not present in the said locality on that particular date and time. This has not been done and this is a major lacuna thereby vitiating the impugned order of externment. In support of these submissions reliance has been placed on the decision of this Court (D.B.) in the case of Abdul Kadir Razzaque Beg Vs. Sub Division Magistrate, Nasik & ors. **[1991 Mh.L.J. 474]**. Mr. Tripathi also pointed out that the law laid down in Abdul Kadir's case (Supra) has been followed by this Court subsequently in Criminal Writ Petition No.1450 of 1998 decided on 20/11/1998 as well as Criminal Writ Petition No.1414 of 2000 decided on 11th October 2000. He also submitted that the in-camera statements were recorded in the first week of March 2006 whereas the externment order has been passed on 8/11/2006 and, therefore, the statements so recorded had become stale and could not have been considered and relied upon to pass the impugned order.

5. The learned APP has filed affidavit-in-reply and placed before me concerned record including in-camera statements of Witness "A" and Witness "B". The show cause notice issued to the petitioner is

dated 5th April 2006 and it has referred to the in-camera statements recorded on 4/3/2006 i.e. just about a month of the show cause notice. The impugned order of externment originates from the show cause notice and, therefore, it cannot be accepted that the in-camera statements recorded on 4th March 2006 had become stale by the time the impugned order of externment was passed on 8/11/2006.

6. Coming to the main ground of the show cause notice being vague and deprived the petitioner from defending the same and more particularly in respect of the in-camera statements, I have perused both the statements from the original file and in both of them the location of the concerned factories has been mentioned. However, in the show cause notice dated 5/4/2006 the location of the factories has not been mentioned. If the show cause notice provides at least the area in which the factory was located and without giving the address of the factory, the petitioner could have an opportunity of defending such statements and perhaps on the ground that he was not available in the area at the given date and at the given time. He was thus incapacitated from pleading and defending the show cause notice on the

point of alibi. This issue has been considered by the Division Bench of this Court in the case of Abdul Kadir (Supra).

7. As noted earlier the law laid down in the case of Abdul Kadir (Supra) has been consistently followed by this Court and, therefore, the in-camera statements of Witness "A" and Witness "B" will have to be excluded in defending the impugned order. What thereafter remains is only one C.R. registered against the petitioner i.e. C.R. No.261/05. The Appellate Authority has also noted that the other four CRs stated in the impugned order of externment have not been taken into consideration in support of the order of externment. Consequently the impugned order of externment cannot be sustained only on one C.R. registered against the petitioner for the offences punishable under Sections 323, 324 and 504 read with Section 34 of IPC. The impugned order of externment is thus required to be quashed and set aside.

8. In the premises, this petition succeeds and the same is hereby allowed. The impugned order of externment dated 8/11/2006 and which came to be

reduced for a period of one year by the Appellate Authority is hereby quashed and set aside.

9. Rule is made absolute accordingly

(B.H.MARL